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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: MPA - 206662

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 24, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 14, 2022, by telephone.

The issue for determination is whether the department correctly denied or modified PA # [REDACTED].

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By:

Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. On 8/17/22 petitioner's provider, Community Living Alliance, submitted PA request [REDACTED] for 35 hours per week of personal care services.
3. On 9/14/22 the department approved a modified amount of personal care services at the 21 hours per week level.
4. Petitioner filed a timely appeal.

## DISCUSSION

Petitioner submitted a written argument along with a letter from Dr. Kristen Marten, petitioner's pediatrician at UW Health. Dr. Marten advocated for 35 hours of personal care to be approved by Medicaid. Dr. Marten explained that despite no change in condition the program approved only a reduced amount of hours. Dr. Marten explained that this reduction is not justified medically and that 35 hours is necessary and appropriate. Dr. Marten further explained why the 35 hours furthers petitioner's safety and minimizes risk.

The department did not submit any letter from the department consultant explaining its version of facts or stating any rationale for a modification of the requested hours. DHA reached out to the department prior to the hearing and did not hear back before the scheduled time of the hearing. Following the hearing, this ALJ contacted the nurse consultant at the department who explained that he had submitted a response letter to his department appeals facilitators some 12 days prior to the hearing. The department has confirmed to this ALJ that the documents were not actually forwarded to DHA until after the hearing. I have declined to admit those delinquent documents into the record.<sup>1</sup> The department's position remains unstated on this record. Given that, and the persuasive letter by Dr. Marten, the petitioner met his burden of demonstrating that the status quo should not be changed and that 35 hours per week is necessary and appropriate.

**I note to petitioner that the provider's office will not receive a copy of this decision. To have the service approved, petitioner must provide a copy of this decision to the provider. The provider must then submit a *new* prior authorization request, along with a copy of this decision, to receive the approved coverage.**

## CONCLUSIONS OF LAW

Petitioner has demonstrated that 35 hours per week of personal care is necessary and appropriate.

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<sup>1</sup> Had this been the first or second instance of delinquent submission, this ALJ would likely have rescheduled the hearing or accepted a late submission. Indeed, I have done that in the past several months in other cases. I cannot simply continue to make exceptions. For several months, or perhaps a year, the Division of Medicaid Services has faltered repeatedly on submission of documents which are essential to DHA's efficient flow of hearings and hearing decisions. This has resulted in many hearings being rescheduled, many petitioners participating in hearing in which neither the ALJ nor the petitioner know the rationale for the department action, and the DHA needing to follow up with petitioners by sending them copies of submissions received at the DHA because petitioners explain they have never received the DMS submissions.

**THEREFORE, it is**

**ORDERED**

That the PA is hereby approved as originally requested at 35 hours per week, and that Community Living Alliance is hereby authorized to provide the requested services. The provider should submit a new prior authorization request along with a copy of this decision which is directed to be approved by the department.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

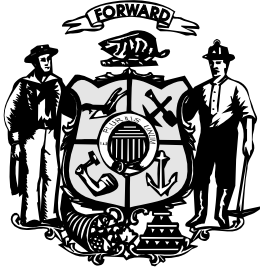
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 13th day of January, 2023



John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 13, 2023.

Division of Medicaid Services